

Nancy E. Glowa
City Solicitor

Arthur J. Goldberg
Deputy City Solicitor

Megan B. Bayer
First Assistant City Solicitor



Assistant City Solicitors
Paul S. Kawai
Diane O. Pires
Patrick C. Cento
Kate M. Kleimola
Sydney M. Wright

Public Records Access Officer
Seah Levy

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

May 9, 2021

Louis A. DePasquale
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

***Re: Alewife Overlay Development Zoning Petition – Response to Ordinance
Committee’s Legal Question from April 7, 2022***

Dear Mr. DePasquale,


The Ordinance Committee held its initial hearing on the Alewife Overlay Development Zoning Petition (the “Petition”) on March 9, 2022, and then held a subsequent hearing on the Petition on April 7, 2022. At the April 7th hearing, the Planning Board voted to request that this office provide a legal opinion under G.L. c.40A as to the criteria to be applied in determining which projects are protected from the provisions of the Petition should it be enacted as an amendment to the Zoning Ordinance. Put another way, are applications for a special permit that have been approved by the Planning Board at a public hearing but have not yet received a written Special Permit decision that has been filed with the City Clerk and issued to the applicant prior to the first publication of notice of the public hearing on the Petition protected from the provisions of the Petition? As set forth in my April 7, 2022 opinion provided to the Ordinance Committee in advance of the April 7, 2022 meeting (the “April 7, 2022 Opinion”), if a petition for a zoning amendment were to exempt certain uses or projects, such as office or laboratory development projects that are already in the planning phase but have not yet receive a written special permit decision, the zoning amendment could be subject to challenge. This is also true for projects that have been approved by a vote of the Planning Board at a public hearing but do not yet have a written special permit decision that has been filed with the City Clerk and issued to the applicant prior to the first publication of notice of the public hearing on the petition.

As explained in the April 7, 2022 Opinion (a copy of which is attached hereto for your convenience), when a zoning ordinance is amended, certain projects are not subject to the amended provisions of the zoning ordinance pursuant to the provisions of the Massachusetts Zoning Act, G.L. c.40A, §6. Amendments to the zoning ordinance do not apply to “a building or special permit issued before the first publication of notice of the public hearing on such

ordinance [] required by section five [of G.L. c. 40A].” A special permit is considered “issued” when a written special permit decision is filed with the City Clerk and “issue[d] to the owner and to the applicant if other than the owner.” G.L. c.40A, §§9, 11; Cohasset Heights, Ltd. v. Zoning Bd. of Appeals of Cohasset, 53 Mass.App.Ct. 116, 118 (2001). Therefore, for projects where the Planning Board has voted at a public hearing to approve a special permit but has not yet filed a written decision with the City Clerk and issued the written decision to the applicant before the first publication of notice of the public hearing on a zoning petition, those projects would be subject to the zoning petition if enacted.

If the Petition at issue were amended to exclude projects where the Planning Board has voted to approve a special permit at a public hearing but has not yet filed a written decision with the City Clerk or issued the decision to the applicant before the first publication of notice of the public hearing on the Petition, the Petition could be subject to challenge for the reasons as discussed above and in the April 7, 2022 Opinion. Exempting such projects could make the Petition vulnerable to challenge for a number of reasons, such as spot zoning, violating the principle of uniformity, and not being rationally related to a demonstrable municipal concern. Additionally, such an amendment to the Petition would be a change to the fundamental character of the Petition that would require refiling and readvertising of the Petition.

Very truly yours,



Nancy E. Glowa
City Solicitor